IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2869 OF 2005

Shri R.V. Kulkarni ..Petitioner
Vs.
Shri Namdeo Laxman Patange
and ors. ..Respondents

None for the petitioner.
Mr. S.R. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 27, 2007.

P.C.:

1. None for the petitioner who is the accused no.3 in C.C. No.399 of 1996. He was impleaded as an accused on the grounds that at the relevant time he was the partner of accused nos.1 and 2 firms.

2. The order dated 14/3/2002 passed by the learned JMFC at Pune in C.C. No.399 of 1996 framing charges for the offences punishable under Sections 406 and 420 read with Section 34 of IPC was challenged in Criminal Revision Application No. 182 of 2002 and the said revision application has been dismissed by the II

Addl. Sessions Judge on 30/7/2004.

3. The order dated 14/3/2002 passed by the learned JMFC at Pune is on record and the learned Magistrate appears to have considered the entire evidence on record and documents. He held that there was sufficient evidence to frame charges against the accused and, therefore, he rejected the application, not to frame the charges.

4. The complaint has been filed in the year 1996 and the complainant was of 69 years of age. As of now he is probably 80 years of age. He stated in the complaint that in the partnership firms - accused nos.1 and 2 he had invested the following fixed deposits:-

(a) Hindustan Engineering (Accused No.1)
FDR No. 2782 - Rs.5000/- for the period from 4/12/1981 to 4/12/1984.

(b) Integrated Trading Company (Accused No.2)
FDR No. 30653 - Rs.5000/- for the period from 20/8/1981 to 20/8/1984.

FDR No. 30652 - Rs. 2500/- for the period from 20/8/1981 to 20/8/1984.

FDR No. 30677 - Rs.5000/- for the period from 18/1/1982 to 18/1/1985.

He further stated that on expiry of the deposit period when he approached the accused some evasive replies were given. He also issued a notice, but there was no effect on the accused. The discharge application was submitted before the trial court on the ground that in the evidence of the complainant at Exh.27 he had admitted that the dispute between the parties regarding recovery of the fixed deposits was of civil nature and there was no prima facie case made out for an offence of cheating as defined under Section 415 and punishable under Section 420 of IPC.

. It is also to be noted that this petition has been pending for admission for last two years. It came to be dismissed in default on 9/12/2005 and subsequently it was restored on 17/5/2006. During the last one year the petition came to be listed from time to time and the learned Advocate for the petitioner has not taken adequate steps to serve the respondent no.1-complainant.

5. On the face of these obtaining circumstances, I do not find any reason to cause interference under Article 227 of the Constitution in the concurrent view taken by both the courts below.

6. Hence the petition is rejected summarily.

(B.H. Marlapalle,J.)